

Merit Systems Protection Board

§1201.136

SPECIAL COUNSEL REQUESTS FOR STAYS

§1201.134 Deciding official; filing stay request; serving documents on parties.

(a) *Request to stay personnel action.* Under 5 U.S.C. 1214(b)(1), the Special Counsel may seek to stay a personnel action if the Special Counsel determines that there are reasonable grounds to believe that the action was taken or will be taken as a result of a prohibited personnel practice.

(b) *Deciding official.* Any member of the Board may delegate to an administrative law judge the authority to decide a Special Counsel request for an initial stay. The Board may delegate to a member of the Board the authority to rule on any matter related to a stay that has been granted to the Special Counsel, including a motion for extension or termination of the stay.

(c) *Place of filing.* A Special Counsel stay request must be filed with the Clerk of the Board.

(d) *Initial filing and service.* The Special Counsel must file two copies of the request, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the respondent agency or the agency's representative. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative. The Special Counsel must serve a copy of the request on the agency or its representative, as shown on the certificate of service.

(e) *Subsequent filings and service.* Each party must serve on every other party or the party's representative one copy of each of its pleadings, as defined by §1201.4(b). A certificate of service describing how and when service was made must accompany each pleading. Each party is responsible for notifying the Board and the other parties in writing of any change in name, address, telephone number, or facsimile number of the party or the party's representative.

(f) *Method of filing and service.* Filing may be by mail, by facsimile, by commercial overnight delivery, or by personal delivery to the Clerk of the Board. Service may be by mail, by facsimile, by commercial overnight deliv-

ery, or by personal delivery to each party or the party's representative, as shown on the certificate of service.

[62 FR 48451, Sept. 16, 1997, as amended at 63 FR 42686, Aug. 11, 1998]

§1201.135 Contents of stay request.

The Special Counsel, or that official's representative, must sign each stay request, and must include the following information in the request:

- (a) The names of the parties;
- (b) The agency and officials involved;
- (c) The nature of the action to be stayed;
- (d) A concise statement of facts justifying the charge that the personnel action was or will be the result of a prohibited personnel practice; and
- (e) The laws or regulations that were violated, or that will be violated if the stay is not issued.

§1201.136 Action on stay request.

(a) *Initial stay.* A Special Counsel request for an initial stay of 45 days will be granted within three working days after the filing of the request, unless, under the facts and circumstances, the requested stay would not be appropriate. Unless the stay is denied within the 3-day period, it is considered granted by operation of law.

(b) *Extension of stay.* Upon the Special Counsel's request, a stay granted under 5 U.S.C. 1214(b)(1)(A) may be extended for an appropriate period of time, but only after providing the agency with an opportunity to comment on the request. Any request for an extension of a stay under 5 U.S.C. 1214(b)(1)(B) must be received by the Board and the agency no later than 15 days before the expiration date of the stay. A brief describing the facts and any relevant legal authority that should be considered must accompany the request for extension. Any response by the agency must be received by the Board no later than 8 days before the expiration date of the stay.

(c) *Evidence of compliance with a stay.* Within five working days from the date of a stay order or an order extending a stay, the agency ordered to stay a personnel action must file evidence setting forth facts and circumstances demonstrating compliance with the order.